

## **REMARKS**

### **Interview Summary**

Applicants greatly appreciate the courtesy that was extended by Examiner Pechhold during the telephone interview held on March 15, 2004. During the interview, proposed amendments to claims 1 and 27 were discussed, whereby the Applicants proposed amending the recitation of an initial high flow bypass to serve as an "alternative route." The Examiner indicated that this might not overcome the cited references. Should the Examiner have comments or additions to this summary, the Examiner is hereby invited to contact Applicants' attorney at the number listed below.

### **Status of the Claims**

Claims 1-30 were subjected to a restriction requirement on June 10, 2002, from which claims 1-14 and 27 were selected for this application. Of the selected claims, Claims 1, 2, 6, 10-14 and 27 are rejected. Claims 3-5 and 7-9 are objected to. No new claims have been added or cancelled.

### **Amended Claims**

In view of the Examiner's remarks, Applicants have amended claims 1 and 27 to more particularly describe the invention. Support for these amendments may be found in the original specification at pages 38, lines 5-13 and page 40, lines 10-22. Applicant respectfully submits that no new matter has been added by this amendment.

## **The Response**

### **Rejections under 35 U.S.C. § 102**

#### **A. New Zealand Patent Publication No. 299114**

Claims 1, 2, 6, 10, 11, 14 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by New Zealand Patent Publication No. 299114 (“Enviropod”). In particular, the Examiner notes that “Enviropod discloses an apparatus and a catch basin filtration system comprising: (a) a filter body seen as filtration means..., (b) a filter body support seen as cage means... dimensioned and adapted to cooperatively engage with the inlet and filtration means...; (c) an initial high flow bypass, seen as outlet..., and (d) a secondary high flow bypass, seen as overflow opening...” Office Action dated September 16, 2003 at page 2. Applicants respectfully submit that Enviropod fails to anticipate the cited claims.

In order to anticipate a claim, a reference must include every material element of that claim either expressly or inherently. *Advanced Display Sys., Inc. v. Kent State University*, 212 F.3d 1272, 1282 (Fed. Cir. 2000). Here, Enviropod fails to include “a filter body support dimensioned and *adapted to cooperatively engage* with said inlet *and with said filter body* to substantially maintain said filter body in a pre-selected position within said inlet,” as recited in Claims 1 and 27 of the instant application. Instead of cooperatively engaging with the *filter body*, the filter body support of Enviropod is attached to a separate frame structure. Specifically, Enviropod teaches that its cage means (3), which the Examiner contends corresponds to the filter body support of the present invention, is suspended from a frame means (4). *See* Enviropod at page 6. Enviropod further teaches that the filtration means (2), which the Examiner contends corresponds to the filter body of the present invention, is also secured to this frame means (4). *See* Enviropod at page 8. This structure is depicted in Enviropod’s Figure 1, where a cage means (3) and filtration means (4) are each suspended from the frame means (4). *See* Enviropod at Figure 1. Given these disclosures, there is no indication that Enviropod discloses a filter body support dimensioned and adapted to

cooperatively engage with a filter body, as claimed in Claims 1 and 27 of the present application.

Additionally, Enviropod fails to include the initial high flow bypass of amended Claims 1 and 27. In view of the Examiner's remarks relating to this initial high flow bypass, Applicants have amended claims 1 and 27 to recite, *inter alia*, "... an initial high flow bypass situated within said filter body support and capable of deflecting the passage of excess fluid during periods of high volume fluid flow..." That is, in the instant application, the passage of excess fluid is deflected (or caused to turn aside) from normal flow through this initial high flow bypass during periods of high volume fluid flow. Applicants note that this amendment is consistent with the dictionary definition to the Examiner cites for the term bypass, as "passage to one side; esp. a *deflected route* usu, around a town." *Merriam Webster's College Dictionary* (10th Ed.) (emphasis added); *see also* Office Action dated September 16, 2003 at 6.

Instead of this initial high flow bypass, Enviropod provides that "the water will *first, initially* flow out of the outlet (14) when the water level rises." Office Action dated September 16, 2003 at 6 (emphasis added). The outlet (14) therefore does not deflect (or cause to turn aside) the passage of excess fluid from normal flow during periods of high flow. On the contrary, Enviropod's outlet (14) provides for the passage of all fluid along the course of normal flow. Thus, Enviropod fails to disclose an initial high flow bypass of the instant application.

For at least the foregoing reasons, Enviropod fails to include every material element of Claims 1 and 27. Since Claims 2, 6, 10, 11, and 14 depend from Claim 1, Enviropod similarly fails to anticipate these claims as well. Applicants thus submit that Enviropod fails to anticipate Claims 1, 2, 6, 10, 11, 14, and 27.

B. U.S. Patent No. 6,093,314

Claims 1, 2, 6, 10-12, 14, and 27 are also rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,093,314 ("Wilson"). In particular, the Examiner notes that "Wilson discloses an apparatus and a catch basin filtration system comprising: (a) a filter body seen as filter..., (b) a filter body support seen as outer housing (12) and inner sleeve (32)..., (c) an initial high flow bypass, seen as outlets..., and (d) a secondary high flow bypass, seen as grating..." Office action dated September 16, 2003 at 4. Applicants respectfully submit that Wilson fails to anticipate the cited claims.

Wilson fails to include every material element of these claims either expressly or inherently. In Wilson's drain insert, the outlet openings (3) in the side walls of the outer housing (12) serve as a first or primary means for releasing water in the drain insert such that nothing is deflected or turned aside from normal flow. *See* Wilson at column 4, lines 26-36; column 7, lines 34-42 (describing the flow of water in the drain insert). As the interior of the outer housing fills up with water, it is first discharged through outlet openings (30). *See id.* Thus, the outlet openings of Wilson do not constitute an initial high flow bypass situated within the filter body support that is capable of deflecting the passage of excess fluid during periods of high volume fluid flow, as claimed in amended Claims 1 and 27.

For at least the foregoing reasons Wilson fails to include every material element of Claims 1 and 27. Since claims 2, 6, 10-12, and 14 depend from Claim 1, Wilson similarly fails to anticipate these claims as well. Applicants thus submit that Wilson fails to anticipate Claims 1, 2, 6, 10-12, 14, and 27.

### CONCLUSION

In view of the foregoing amendments and remarks, the Applicants believe that the application is in good and proper condition for allowance. A Notice of Allowance is earnestly requested. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is encouraged to call the undersigned at (650) 463-8100.

Respectfully submitted,

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